

§ 1201.155

5 CFR Ch. II (1–1–04 Edition)

(c) If the appellant files an appeal prematurely under this subpart, the judge will dismiss the appeal without prejudice to its later refiling under § 1201.22 of this part. If holding the appeal for a short time would allow it to become timely, the judge may hold the appeal rather than dismiss it.

(d) This paragraph does not apply to employees of the Postal Service or to other employees excluded from the coverage of the federal labor-management relations laws at chapter 71 of title 5, United States Code. If the appellant has filed a grievance with the agency under a negotiated grievance procedure, he may ask the Board to review the final decision on the grievance if he alleges before the Board that he is the victim of prohibited discrimination. Usually, the final decision on a grievance is the decision of an arbitrator. A full description of an individual's right to pursue a grievance and to request Board review of a final decision on the grievance is found at 5 U.S.C. 7121 and 7702. The appellant's request for Board review must be filed within 35 days after the date of issuance of the decision or, if the appellant shows that the decision was received more than 5 days after the date of issuance, within 30 days after the date the appellant received the decision. The appellant must file the request with the Clerk of the Board, Merit Systems Protection Board, Washington, DC 20419. The request for review must contain:

- (1) A statement of the grounds on which review is requested;
- (2) References to evidence of record or rulings related to the issues before the Board;
- (3) Arguments in support of the stated grounds that refer specifically to relevant documents, and that include relevant citations of authority; and
- (4) Legible copies of the final grievance or arbitration decision, the agency decision to take the action, and other relevant documents. Those documents may include a transcript or tape recording of the hearing.

(e) The record will close upon expiration of the period for filing the response to the petition for review, or to the brief on intervention, if any, or on any other date the Board sets for this purpose. Once the record closes, no ad-

ditional evidence or argument will be accepted unless the party submitting it shows that the evidence was not readily available before the record closed.

[54 FR 53504, Dec. 29, 1989, as amended at 59 FR 31109, June 17, 1994; 62 FR 59992, Nov. 6, 1997; 65 FR 25624, May 3, 2000]

§ 1201.155 Remand of allegations of discrimination.

If the parties file a written agreement that the discrimination issue should be remanded to the agency for consideration, and if the judge determines that action would be in the interest of justice, the judge may take that action. The remand order will specify a time period within which the agency action must be completed. In no instance will that time period exceed 120 days. While the issue is pending with the agency, the judge will retain jurisdiction over the appeal.

§ 1201.156 Time for processing appeals involving allegations of discrimination.

(a) *Issue raised in appeal.* When an appellant alleges prohibited discrimination in the appeal, the judge will decide both the issue of discrimination and the appealable action within 120 days after the appeal is filed.

(b) *Issue not raised in appeal.* When an appellant has not alleged prohibited discrimination in the appeal, but has raised the issue later in the proceeding, the judge will decide both the issue of discrimination and the appealable action within 120 days after the issue is raised.

(c) *Discrimination issue remanded to agency.* When the judge remands an issue of discrimination to the agency, adjudication will be completed within 120 days after the agency completes its action and returns the case to the Board.

§ 1201.157 Notice of right to judicial review.

Any final decision of the Board under 5 U.S.C. 7702 will notify the appellant of his or her right, within 30 days after receiving the Board's final decision, to petition the Equal Employment Opportunity Commission to consider the Board's decision, or to file a civil action in an appropriate United States